

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL ANTHONY BAGGIO and U.S. POSTAL SERVICE,
POST OFFICE, East Northport, NY

*Docket No. 02-1981; Submitted on the Record;
Issued April 2, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant's foot condition is causally related to his employment as a letter carrier.

On August 27, 1988 appellant, then a 51-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation, alleging that, on that date, while descending stairs, the stair separated and he fell, thereby injuring his left knee, calf of leg and ankle. By letter dated September 30, 1988, the Office of Workers' Compensation Programs accepted appellant's claim for sprain of the left knee.

On November 1, 1989 appellant filed a notice of recurrence (Form CA-2a), wherein he alleged that, due to extended standing time casing the mail, his left knee was swelling. On September 8, 1990 appellant filed another notice of recurrence, alleging that, due to prolonged standing, he was having pain and swelling in the same area as the original injury. By decision dated April 25, 1991 and finalized May 1, 1991, the Office rejected appellant's claim for recurrence.

On May 15, 1991 appellant filed a notice of occupational disease (Form CA-2), alleging that he was subjected to excessive standing, pivoting and twisting on both feet while casing mail, and that this resulted in ulcerations of both feet, which led to a severe infection of the left foot and leg.

By decision dated April 2, 1992, the Office denied appellant's claim for the reason that the evidence failed to demonstrate that appellant sustained an injury as alleged. Between March 23, 1993 and September 1, 1998, appellant filed four separate requests for

reconsideration. In each case, the Office reviewed the case on its merits but denied modification of the April 2, 1992 decision.¹

The medical evidence submitted in support of appellant's claim and numerous requests for reconsideration included an April 30, 1991 report by Dr. Bernard J. Nash, a Board-certified internist, wherein he noted that appellant clearly suffers from noninsulin dependent diabetes mellitus, mild peripheral neuropathy and osteomyelitis of the left leg. It was his opinion that the ulcerations and the callous formation derived directly from appellant's occupation as a letter carrier. In an August 14, 1991 report, Dr. Mark E. Hall, a podiatrist, indicated that the twisting motion involved in casing mail increased shearing pressure under the fifth metatarsal heads of both his feet, that this shearing pressure developed a breakdown and ulceration of both feet, and that appellant almost lost his leg from the infection that developed in his left leg. In a March 31, 1993 report, Dr. Bruce Gordon, a podiatrist, indicated that, since July 1990, appellant has been treated for calluses which developed from his employment at the employing establishment and that these calluses had progressed to diabetic ulcers. In a medical report dated June 23, 1996, Dr. Frank Dittmar, a podiatrist, noted that he had been treating appellant since July 18, 1995, that he had multiple hospitalizations and operations on both feet, that he was of the opinion that any weight bearing occupation would certainly lead to further ulceration, hospitalization and possible amputation.

On November 17, 1999 appellant filed another notice of occupational disease (Form CA-2), alleging that, due to excessive standing at his job, he had developed calluses and ulcers on his left foot, cellulitis of left foot to left upper calf and osteomyelitis left foot. In support of his claim, appellant submitted a December 22, 1999 medical report by Dr. Craig B. Ordway, a Board-certified orthopedic surgeon, who noted that he had been treating appellant since August 27, 1988, when he was injured when he fell on some steps. He noted complications from that injury consisted of thrombophlebitis and that it resolved "to a considerable degree." Dr. Ordway noted that, following the injury and complications, appellant was limited to standing no more than three hours a day. Appellant informed Dr. Ordway that these restrictions had not been kept and Dr. Ordway indicated that, as a result, appellant had developed a rather severe thrombophlebitis and postphlebotic condition in the left lower leg, which was treated. He further indicated:

"There is no doubt that this condition was exacerbated and brought about by his extended standing which was beyond the recommendations made by this office. At the present time the patient is at risk for recurrence of his phlebitis and further surgical intervention, including the possibility of amputation."

In its decision dated February 8, 2000, the Office treated appellant's claim for compensation as a request for reconsideration. The Office denied appellant's request for reconsideration for the reason that the evidence was insufficient to warrant modification of the December 9, 1998 decision.

¹ Appellant's March 23, 1993 request for reconsideration was rejected by decision dated June 25, 1993. His June 23, 1994 request for reconsideration was rejected by decision dated July 18, 1995. Appellant's July 15, 1995 request for reconsideration was denied on May 5, 1996. His September 1, 1998 request for reconsideration was denied on December 9, 1998.

In a January 24, 2001 medical report, Dr. Ordway stated:

“During my treatment of [appellant], I was hounded over the telephone by various supervisors and postal personal (sic) demanding to know -- for example -- if he could stand for 55 minutes instead of 1 hour. As you may realize, medicine is not an exact science and such picayune restrictions and details really do not apply. The obvious fact was, [appellant] was being forced to stand too long for one period of time (whatever that may be) and it was worsening his condition. With incomplete venous return, the overall fascular status of the leg has deteriorated over the years. This has led to multiple amputations. The patient now has frank postphlebotic syndrome with discoloration of both legs, swelling of the calves (left greater than right) and an incompletely closed foot ulcer on the right side.

“To make it perfectly clear it is my medical opinion, based upon more than 30 years of orthopedic practice, that [appellant’s] present condition is directly related to the original injury and his requirements for standing which were imposed upon him by the [employing establishment].”

By decision dated April 12, 2001, the Office denied appellant’s request for reconsideration.

By letter dated May 6, 2002, appellant was referred to Dr. Richard Goodman, a Board-certified orthopedic surgeon, for a second opinion. In a medical report dated May 9, 2002, Dr. Goodman stated: “In summary, this is an obese male with diabetic neuropathy and diabetic arterial insufficiency.” He noted that appellant “is currently out of work secondary to the diabetic neuropathy, the diabetic vascular insufficiency and his obesity.” He also noted, “There is no evidence of any on-job-causally related event, despite his report and the reports of the physicians.” In response to further questions from the Office, Dr. Goodman, in a note dated June 11, 2002, indicated:

“None of the patient’s present conditions are related to the sprained knee. The patient’s current symptoms are related to the ulcerations on the bottom of both feet and the infections of both feet. Ulcerations of the feet do not occur from standing three hours per day. They also do not occur from delivering mail while sitting inside a vehicle. Ulcerations of the feet and infections of the feet are known common complications of diabetes mellitus with arterial sclerosis, peripheral neuropathy and obesity.

“There are no employment factors either by direct cause, aggravation, precipitation or acceleration which have anyway, (sic) can cause or known to cause ulcers and infections of the feet.”

In a medical opinion dated March 16, 2002, Dr. Ordway reiterated his opinion that appellant was forced to stand too long while sorting letters and that this exacerbated his condition.

The record also contains evidence of a dispute between appellant and the employing establishment over whether appellant was forced to stand for over three hours a day to perform

his casing duties. Appellant contends that he often stood more than three hours. In support of his contention, he submitted two statements from witnesses, who indicated that appellant had to remain standing to perform his casing duties. Appellant also submitted time sheets which he claims indicate that he was forced to stand over three hours a day. The employing establishment vehemently challenges appellant's assertion that he was forced to exceed his doctor's restrictions of standing no more than three hours a day. In response to appellant's submission of the time sheets, the employing establishment noted that the time cards reflect the number of hours an employee worked during the day; they do not reflect the type of work or the physical nature of the work. The employing establishment reiterated its assertion that appellant's supervisors were aware of his restrictions and abided by them. The employing establishment also noted that appellant's last day of employment with the employing establishment was December 14, 1990.

By decision dated June 21, 2002, the Office denied modification of its earlier decision.

The Board finds that this case is not in posture for decision.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;² (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;³ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴ The medical opinion must be one of reasonable medical certainty,⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

In the instant case, appellant's treating physician, Dr. Ordway, in numerous medical opinions emphatically states his position that appellant's postphlebotic syndrome was directly related to his employment for the employing establishment. He indicated, specifically, that appellant was "forced to stand too long for one period of time (whatever that may be)" and that it worsened his condition. Dr. Ordway's conclusion is based on his physical examinations of appellant that have extended over a period of more than 10 years. However, Dr. Goodman, the second opinion physician, reached a different conclusion. He stated that there were no employment factors that caused or aggravated appellant's ulcerations on the bottom of his feet. Dr. Goodman indicated that ulceration of the feet and infections of the feet were common complications of diabetes mellitus and arterial sclerosis, peripheral neuropathy and obesity. Accordingly, there was an unresolved conflict in the evidence.

² See *Ronald K. White*, 37 ECAB 176, 178 (1985).

³ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

⁵ See *Morris Scanlon*, 11 ECAB 384-85 (1960).

⁶ See *William E. Enright*, 31 ECAB 426, 430 (1980).

Section 8123(a) of the Federal Employees' Compensation Act provides that, when there is a disagreement between a physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.⁷ Accordingly, this case will be remanded to the Office for resolution of the conflict. On remand, the Office shall refer appellant, along with the case record and a statement of accepted facts, to an appropriate specialist for a rationalized opinion to resolve in conflict. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Worker's Compensation Programs dated June 21, 2002 is set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
April 2, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁷ *Lawrence C. Parr*, 48 ECAB 445, 453 (1997).